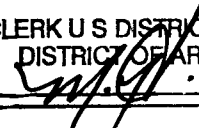


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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY 	DEPUTY

8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE DISTRICT OF ARIZONA

10 United States of America,
 11
 12 Plaintiff,
 13 vs.

CR-15-01436-PHX-SPL

PLEA AGREEMENT

14 William Schwoerer,
 True Name: William Ralph Schwoerer,
 15 Defendant.

16 The United States and William Schwoerer agree to dispose of this matter on the
 17 following terms and conditions:

18 **1. PLEA**

19 Defendant will plead guilty to the information, charging Defendant with one count
 20 of conspiracy, in violation of 18 U.S.C. § 371, a class D felony offense.

21 **2. MAXIMUM PENALTIES**

22 a. A violation of 18 U.S.C. §371 is punishable by a maximum fine of
 23 \$250,000, a maximum term of imprisonment of 5 years, or both, and a term of supervised
 24 release of 3 years. The maximum term of probation is 5 years.

25 b. According to the Sentencing Guidelines issued pursuant to the Sentencing
 26 Reform Act of 1984, the Court shall order Defendant to:

27 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
 28 § 3663 and/or 3663A, unless the Court determines that restitution would not be

1 appropriate;

2 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
3 fine is not appropriate;

4 (3) serve a term of supervised release when required by statute or when
5 a sentence of imprisonment of more than one year is imposed (with the understanding
6 that the Court may impose a term of supervised release in all other cases); and

7 (4) pay upon conviction a \$100 special assessment for each count to
8 which Defendant pleads guilty pursuant to 18 U.S.C. § 3013.

9 c. The Court is required to consider the Sentencing Guidelines in determining
10 Defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
11 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
12 by statute for the crime of conviction, unless there are stipulations to the contrary that the
13 Court accepts.

14 **3. AGREEMENTS REGARDING SENTENCING**

15 a. No Agreements. There are no agreements regarding the final sentence in
16 the case. The parties are free to make any sentence recommendations to the Court they
17 believe are appropriate.

18 b. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, Defendant agrees
19 to pay full restitution, not to exceed \$473,088.40, to M&I Bank (now BMO Harris Bank),
20 specifically for the property designated as 10 acres of vacant land in New River. The
21 restitution order will be joint and several with any other defendant prosecuted for the
22 same transaction.

23 c. Assets and Financial Responsibility. Defendant shall make a full
24 accounting of all assets in which Defendant has any legal or equitable interest.
25 Defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend,
26 or transfer any such assets or property before sentencing, without the prior approval of
27 the United States (provided, however, that no prior approval will be required for routine,
28 day-to-day expenditures). Defendant also expressly authorizes the United States

1 Attorney's Office to immediately obtain a credit report as to Defendant in order to
2 evaluate Defendant's ability to satisfy any financial obligation imposed by the Court.
3 Defendant also shall make full disclosure of all current and projected assets to the U.S.
4 Probation Office immediately and prior to the termination of Defendant's supervised
5 release or probation, such disclosures to be shared with the U.S. Attorney's Office,
6 including the Financial Litigation Unit, for any purpose. Finally, Defendant shall
7 participate in the Inmate Financial Responsibility Program to fulfill all financial
8 obligations due and owing under this agreement and the law.

9 d. Acceptance of Responsibility. If Defendant makes full and complete
10 disclosure to the U.S. Probation Office of the circumstances surrounding Defendant's
11 commission of the offense, and if Defendant demonstrates an acceptance of responsibility
12 for this offense up to and including the time of sentencing, the United States will
13 recommend a two-level reduction in the applicable Sentencing Guidelines offense level
14 pursuant to U.S.S.G. § 3E1.1(a). If Defendant has an offense level of 16 or more, the
15 United States will recommend an additional one-level reduction in the applicable
16 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

17 **4. COOPERATION AGREEMENT**

18 a. Cooperation Required

19 1. If requested by the United States, Defendant shall meet with
20 representatives of the United States at any reasonable time and place and, in such
21 meetings, shall: (i) waive the Fifth Amendment privilege against self-incrimination; (ii)
22 answer all questions asked about any topic whatsoever; and (iii) provide full and
23 complete information about the topics discussed in each interview, if necessary by
24 volunteering information about which no questions are asked.

25 2. If requested by the United States, Defendant shall deliver to the
26 United States any documents and other items to which the defendant has access.

27 3. If requested by the United States, Defendant shall testify at any time
28 and place and, when testifying, shall not invoke the Fifth Amendment privilege against

1 self-incrimination.

2 4. All information, evidence, and testimony provided by Defendant
3 pursuant to this section, on any topic whatsoever, shall be truthful, honest, candid, and
4 complete with no knowing and material omissions or false statements. Defendant shall
5 not attempt to either protect or falsely implicate any person or entity through false
6 information or omission.

7 5. The United States Attorney's Office for the District of Arizona shall
8 not use directly against Defendant in any criminal proceeding (other than a criminal
9 forfeiture proceeding) any evidence provided by Defendant pursuant to this agreement.
10 Additionally, pursuant to Section 1B1.8 of the Sentencing Guidelines, the Court shall not
11 use such evidence in determining Defendant's advisory Sentencing Guidelines range.
12 For the avoidance of doubt, however, the United States may (i) make derivative use of
13 evidence provided by Defendant pursuant to this Addendum, and (ii) use such evidence
14 directly against Defendant in any criminal forfeiture proceeding and any administrative
15 or civil proceeding.

16 6. Defendant shall work undercover only under the direct supervision
17 of law enforcement officers and with the prior approval of the Court.

18 7. If Defendant discloses or reveals to any third party the fact that
19 Defendant is cooperating, or the nature of any information that has been obtained by the
20 United States, Defendant shall notify the United States as soon as possible of any such
21 disclosures.

22 8. Defendant shall notify the United States as soon as possible of any
23 interactions or contacts with any subject or target of any ongoing criminal investigation,
24 any criminal defendant, or their respective counsel or associates.

25 9. Defendant shall not violate any local, state, federal or foreign laws.

26 b. Additional Agreements Regarding Sentencing

27 1. At the request of the United States, Defendant shall request
28 sentencing be deferred for a period of 3 months. After such period, if the United States

1 wishes for Defendant's cooperation to continue, Defendant shall not oppose any motions
2 to continue the sentencing.

3 2. Prior to Defendant's sentencing, the United States shall in good faith
4 consider moving the Court to depart downward from the Sentencing Guidelines, and if
5 applicable impose a sentence below the level established by law as the minimum
6 sentence, pursuant to Section 5K1.1 of the Sentencing Guidelines and 18 U.S.C. §
7 3553(e), respectively.

8 3. At sentencing and any other appropriate time, the United States shall
9 bring the nature and extent Defendant's cooperation to the attention of the Court and/or
10 the Federal Bureau of Prisons.

11 c. Breach of the Plea Agreement or Addendum

12 1. If Defendant fails to comply with any of the obligations or promises
13 set forth in the Plea Agreement or this Addendum, the United States may:

14 (1) in its sole and absolute discretion, declare any provision of
15 the Plea Agreement and this Addendum null and void, without giving Defendant any
16 right or option to withdraw from the Plea Agreement or the plea of guilty;

17 (2) recommend any sentence, up to and including the statutory
18 maximum sentence;

19 (3) prosecute Defendant, or reinstitute prosecution of Defendant,
20 for any and all crimes committed by Defendant, notwithstanding the Statute of
21 Limitations, the Speedy Trial Act, and any constitutional restrictions in bringing later
22 proceedings;

23 (4) use in any manner, and in any proceeding, any evidence
24 provided by Defendant before or after execution of this Addendum; and

25 (5) advise the Bureau of Prisons that Defendant is no longer a
26 cooperating witness, and recommend re-designation of the Defendant to a higher
27 custodial level.

28 2. If there is a dispute regarding the obligations of the parties under this

1 agreement, the United States District Court shall determine whether the United States or
2 Defendant has failed to comply with this agreement including whether Defendant has
3 been truthful.

4 **5. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

5 a. This office shall not prosecute Defendant for any offenses committed by
6 Defendant, and known by the United States, in connection with the activity set forth in
7 the indictment.

8 b. This agreement does not, in any manner, restrict the actions of the United
9 States in any other district or bind any other United States Attorney's Office.

10 **6. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

11 a. If the Court, after reviewing this plea agreement, concludes that any
12 provision contained herein is inappropriate, it may reject the plea agreement and give
13 Defendant the opportunity to withdraw the guilty plea in accordance with Federal Rule of
14 Criminal Procedure 11(c)(5).

15 b. If Defendant's guilty plea or plea agreement is rejected, withdrawn,
16 vacated, or reversed at any time, this agreement shall be null and void, the United States
17 shall be free to prosecute Defendant for all crimes of which it then has knowledge and
18 any charges that have been dismissed because of this plea agreement shall automatically
19 be reinstated. In such event, Defendant waives any and all objections, motions, and
20 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
21 restrictions in bringing later charges or proceedings. Defendant understands that any
22 statements made at the time of Defendant's change of plea or sentencing may be used
23 against Defendant in any subsequent hearing, trial, or proceeding subject to the
24 limitations of Federal Rule of Evidence 410.

25 **7. WAIVER OF DEFENSES AND APPEAL RIGHTS**

26 Defendant waives (1) any and all motions, defenses, probable cause
27 determinations, and objections that Defendant could assert to the indictment or
28 information; and (2) any right to file an appeal, any collateral attack, and any other writ

1 or motion that challenges the conviction, an order of restitution or forfeiture, the entry of
 2 judgment against Defendant, or any aspect of Defendant's sentence, including the manner
 3 in which the sentence is determined, including but not limited to any appeals under 18
 4 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
 5 (habeas petitions), and any right to file a motion for modification of sentence, including
 6 under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,
 7 collateral attack, or other motion Defendant might file challenging the conviction, order
 8 of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to
 9 bar an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial
 10 misconduct" (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

11 **8. DISCLOSURE OF INFORMATION**

12 a. The United States retains the unrestricted right to provide information and
 13 make any and all statements it deems appropriate to the U.S. Probation Office and to the
 14 Court in connection with the case.

15 b. Any information, statements, documents, and evidence that Defendant
 16 provides to the United States pursuant to this agreement may be used against Defendant
 17 at any time.

18 c. Defendant shall cooperate fully with the U.S. Probation Office. Such
 19 cooperation shall include providing complete and truthful responses to questions posed
 20 by the U.S. Probation Office including, but not limited to, questions relating to:

- 21 (6) criminal convictions, history of drug abuse, and mental illness; and
- 22 (7) financial information, including present financial assets or liabilities
- 23 that relate to the ability of Defendant to pay a fine or restitution.

24 **9. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

25 Nothing in this agreement shall be construed to protect Defendant from
 26 administrative or civil forfeiture proceedings or prohibit the United States from
 27 proceeding with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C.
 28 § 3613, all monetary penalties, including restitution imposed by the Court, shall be due

1 immediately upon judgment, shall be subject to immediate enforcement by the United
 2 States, and shall be submitted to the Treasury Offset Program so that any federal payment
 3 or transfer of returned property Defendant receives may be offset and applied to federal
 4 debts (which offset will not affect the periodic payment schedule). If the Court imposes a
 5 schedule of payments, the schedule of payments shall be merely a schedule of minimum
 6 payments and shall not be a limitation on the methods available to the United States to
 7 enforce the judgment.

8 **10. ELEMENTS**

9 **Conspiracy, 18 U.S.C. § 371**

10 Between about January 1 of 2006 and April 30 of 2011, in the District of Arizona:

- 11 1. An agreement existed between two or more people to commit the crime of
 12 bank fraud, in violation of 18 U.S.C. § 1344;
- 13 2. Defendant became a member of the conspiracy knowing at least one of its
 14 objectives; and
- 15 3. One of the members of the conspiracy performed at least one overt act for
 16 purposes of carrying out the conspiracy.

17 **Bank Fraud**

18 Between about January 1 of 2006 and April 30 of 2011, in the District of Arizona:

- 19 1. Defendant and others devised and carried out a scheme or plan for
 20 obtaining money or property from a financial institution by means of false pretenses,
 21 promises or statements;
- 22 2. Defendant knew the pretenses, promises or statements were false;
- 23 3. The pretenses, promises or statements were material; that is, they would
 24 reasonably influence, or were capable of influencing, a financial institution to part with
 25 money or property;
- 26 4. Defendant acted with the intent to defraud; and
- 27 5. The scheme or artifice to defraud was committed against a financial
 28 institution with accounts insured by the FDIC.

1 **11. FACTUAL BASIS**

2 Defendant admits that the following facts are true and that if this matter were to
3 proceed to trial the United States could prove the following facts beyond a reasonable
4 doubt:

5 From at least 2006 through April of 2011, I was a residential developer and
6 builder in the Phoenix area, operating through my company, Cordel Contracting
7 Corporation. I was married to C.S., and I directed her to form a company called Apex
8 Financial, LLC. In 2010, I knowingly and intentionally conspired and schemed with
9 others to commit fraud in relation to the short sales of two properties.

10 The first concerned 10 acres of vacant land located in New River. I assisted Bryce
11 E., my brother-in-law and friend, in purchasing the property for \$800,000 in August of
12 2006. I provided a down payment of \$250,000 and some of the monthly mortgage
13 payments. After the real estate market downturn, I arranged for a short sale of the
14 property to my wife, C.S., for approximately \$48,000 on August 20, 2010. As part of the
15 short sale transaction, Bryce E. signed a statement attesting to lender M&I Bank (now
16 BMO Harris Bank) that there was no "personal, family or business relationships between
17 the buyer and seller," when in fact there was a personal and family relationship between
18 the buyer and seller. I instructed Bryce E. not to correct that false statement. I am aware
19 that, ~~as a result of this transaction~~ ^{MEK} M&I Bank, FDIC-insured, lost \$473,088.40. During
20 this transaction, my real estate agent was Shelly B. of DPR Realty, who represented both
21 the buyer and the seller and was aware of the relationships among the relevant parties.

22 The second short sale involved a residence located at 101 East Sabrosa in New
23 River. I ostensibly sold that residence to LeeAnn E., mother of my brother-in-law and
24 friend Bryce E., in August of 2009. In December of 2010, I attempted to arrange the
25 short sale of the home to my wife, C.S., even though there was a family relationship
26 among the parties. M&I Bank was alerted to the attempted fraud and instead took the
27 property into foreclosure in April of 2011. I am aware that, as a result of this transaction,
28 M&I Bank lost \$336,257.50. During this attempted transaction, my real estate agent was

1 Shelly B. of DPR Realty, who represented both the buyer and the seller and was aware of
2 the relationships among the relevant parties.

3 Defendant shall swear under oath to the accuracy of this statement and, if
4 Defendant should be called upon to testify about this matter in the future, any intentional
5 material inconsistencies in Defendant's testimony may subject Defendant to additional
6 penalties for perjury or false swearing, which may be enforced by the United States
7 under this agreement.

8 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

9 I have read the entire plea agreement with the assistance of my attorney. I
10 understand each of its provisions and I voluntarily agree to it.

11 I have discussed the case and my constitutional and other rights with my attorney.
12 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
13 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
14 present evidence in my defense, to remain silent and refuse to be a witness against myself
15 by asserting my privilege against self-incrimination, all with the assistance of counsel,
16 and to be presumed innocent until proven guilty beyond a reasonable doubt.

17 I agree to enter my guilty plea as indicated above on the terms and conditions set
18 forth in this agreement.

19 I have been advised by my attorney of the nature of the charges to which I am
20 entering my guilty plea. I have further been advised by my attorney of the nature and
21 range of the possible sentence and that my ultimate sentence shall be determined by the
22 Court after consideration of the advisory Sentencing Guidelines.

23 My guilty plea is not the result of force, threats, assurances, or promises, other
24 than the promises contained in this agreement. I voluntarily agree to the provisions of
25 this agreement and I agree to be bound according to its provisions.

26 I understand that if I am granted probation or placed on supervised release by the
27 Court, the terms and conditions of such probation/supervised release are subject to
28 modification at any time. I further understand that if I violate any of the conditions of my

1 probation/supervised release, my probation/supervised release may be revoked and upon
 2 such revocation, notwithstanding any other provision of this agreement, I may be
 3 required to serve a term of imprisonment or my sentence otherwise may be altered.

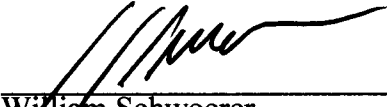
4 This written plea agreement, and any written addenda filed as attachments to this
 5 plea agreement, contain all the terms and conditions of the plea. Any additional
 6 agreements, if any such agreements exist, shall be recorded in a separate document and
 7 may be filed with the Court under seal; accordingly, additional agreements, if any, may
 8 not be in the public record.

9 I further agree that promises, including any predictions as to the Sentencing
 10 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
 11 (including my attorney) that are not contained within this written plea agreement, are null
 12 and void and have no force and effect.

13 I am satisfied that my defense attorney has represented me in a competent manner.

14 I fully understand the terms and conditions of this plea agreement. I am not now
 15 using or under the influence of any drug, medication, liquor, or other intoxicant or
 16 depressant that would impair my ability to fully understand the terms and conditions of
 17 this plea agreement.

18
 19 Date 11/17/15

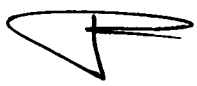

 20 William Schwoerer
 Defendant

21 APPROVAL OF DEFENSE COUNSEL

22 I have discussed this case and the plea agreement with my client in detail and have
 23 advised Defendant of all matters within the scope of Fed. R. Crim. P. 11, the
 24 constitutional and other rights of an accused, the factual basis for and the nature of the
 25 offense to which the guilty plea will be entered, possible defenses, and the consequences
 26 of the guilty plea including the maximum statutory sentence possible. I have further
 27 discussed the concept of the advisory Sentencing Guidelines with Defendant. No
 28 assurances, promises, or representations have been given to me or to Defendant by the

1 United States or any of its representatives that are not contained in this written
2 agreement. I concur in the entry of the plea as indicated above and that the terms and
3 conditions set forth in this agreement are in the best interests of my client. I agree to
4 make a bona fide effort to ensure that the guilty plea is entered in accordance with all the
5 requirements of Fed. R. Crim. P. 11.

6 11/17/15
7 Date


8 Phil Noland
Attorney for Defendant

9 **APPROVAL OF THE UNITED STATES**

10 I have reviewed this matter and the plea agreement. I agree on behalf of the
11 United States that the terms and conditions set forth herein are appropriate and are in the
12 best interests of justice.

13
14 JOHN S. LEONARDO
United States Attorney
District of Arizona

15
16 11-17-15
17 Date


18 MONICA B. KLAPPER
Assistant U.S. Attorney

19 **ACCEPTANCE BY THE COURT**

20
21 Date


22 Honorable Steven P. Logan
United States District Judge